

Recd
File
Serial No

1863
4687

1863

(Court)

File No. ~~7~~ 7

Ms. 1-3

Jurisdiction of the Bangalore Small Cause
Court

Indexed

MS

63
7
5

and Genl Beresford should be
 put out in order to the latter
 this point of jurisdiction
 is touched in as between
 the Sup^d of M^{rs} 2 or
 Government M^{rs} 2 or
 the M^{rs} Court of Requests
 D^d 25/9/63

The orders hitherto issued regarding
 the jurisdiction of the Courts at
 Bangalore will be found in the
 accompanying letters which may
 be sent to the Jst Court for
 perusal (to be returned).

I understand however that
 in considering a Court of Small
 Causes at this Station, it
 was the intention of the Gov^t
 of India that all persons
 not actually borne on the
 Army Rolls should be
 amenable to the said Court; &
 that the accidental circum-
 stances of their residing in
 a strictly military quarter
 would not bar this liability.
 according to this Major Sankar
 would be so amenable.
 I should the Jst Court

1863. No 115

From
 The Judicial Commissioner
 To The Secretary

Dated 21st Sept 1863

Despatched

Received

Enclosures, No.

No 1/7

Subject.

Submits for the Orders
 of the Comm^r a copy of
 a letter from the 1st Judge
 of the Small Cause Court
 relative to the amenable-
 or otherwise of Military
 Officers in Civil Employ
 and of those who are attached
 to the Mysore Commission and
 residing in the Bangalore Cantonment
 to the Military Courts of Requests

COM. 25/9/63

The papers showing the nature of the
 distinction between the late Court
 No. 2 Jst Pro — 5-10-63

and however ~~interesting~~ any
doubts on this point, I
shall be glad to refer the
question for the orders of Govt
D 28/9/63

N^o. 171

Mysore Judge's Court

From

C. B.

File No.

Serial No.

Wardens Register

Judge Commissioner

in Mysore

To

The Secretary

to the Commissioner

of Mysore

Dated Bangalore 24th Sept 1863

Sir,

I have the honor to submit
for the consideration and orders of
the Commissioner the accompanying
copy of a letter to my address
No. 306 from the First Judge of
the Bangalore Court of Small
Causes under date the 11th Instant
in regard to the question of the
responsibility or otherwise of
Military Officers in Civil suits
in general, and of those who are
attached

attached to the Mysore Commission
and residing in the Bangalore
Cantonment in particular, to the
Military Court of Requests, and
suggesting for the consideration of
Superior Authority whether it would
not be advisable to declare such
Officers to be amenable solely to the
Court of Small Causes and not to
the Military Court of Requests.

2 The present reference
has arisen out of a Suit for a
small amount which has been
recently filed in the Bangalore
Small Cause Court against Major
Rankin - Assistant to the Chief
Engineer and which that Officer
was anxious to contest upon its
merits - The Judge of the Small
Cause Court decided, however, that
the case must be struck off the
File for want of Jurisdiction.

in accordance with the provisions
of Section XXIV of the Regulations
of the Court by which Cases cog:
nizable by Military Courts of
Request was specially excluded
from the Jurisdiction of the Small
Cause Court.

3 Although the Section in
question distinctly shows the Juris:
diction of Military Courts of
Requests, it appears to me to be
doubtful whether it was incumbent
upon the Judge to strike out the
case upon the above ground, not only
because the Defendant Major
Rankin did not himself urge
the plea of no jurisdiction, but
more especially with regard to
the peculiar features and circum:
stances of the Action of Banga:
lor which has I believe been
declared not to be a Military

Court.

Cantonment by the Authority of
the Supreme Government.

4 I consider however, that
under all the circumstances, Mr.
Rickitts acted discreetly and
judiciously in striking out the
case, and in subsequently referring
the general question of the Juris-
diction of his Court in regard to
Suits which might be brought by
or against Military Officers in
Civil Employment, for the orders of
Superior Authority.

5 It is quite clear that
if the Bangalore Station had
been recognized as a Military
Cantonment, all Officers whether
in Civil Employment or not, and others,
persons generally, resident within
its limits would have become
amenable to the Military Court.
Requests by order and as a

condition of Indian prisoners
within Military Limits -

6 It has been distinctly laid
down that by "cases cognizable
by Military Courts of Request"
are to be understood

Firstly - Cases cognizable by
European Military Courts of
Request under Act 20 and 21 Vict.
Chap. 66 - Section 67 - Actions
of debt and all personal actions
against Officers, all persons licensed
to act as sutlers to any Corps or
Detachment or at any Station
or Cantonment, all persons res-
ident within the limits of a
Military Cantonment or ^{other} persons
amenable to the provisions of the
Indian Military Act, provided
the value in question shall not
exceed 400 Company's Rupees
and that the Defendant was a
person

reason of the above description,
when the Cause of Action arose.

- Secondly - Cases cognizable
by Native Courts of Request under
the provisions of - Section 2 - Act
XI of 1841 -

7 The above bring the state
of the Law as it affects the question
of the amenableity, not only of
Military Officers, but of any other
parties residing within the limits
of a Military Cantonment, to
Military Courts of Request, I
do not consider that it will be
advisable to claim, in behalf of
the Military Officers attached
to the Mysore Commission or
others, any special immunity from
the Jurisdiction of the Local
Courts of Request by reason of
their being in Civil Employ, or
to declare them on that account,

to be solely amenable to the Jurisdiction of the Bangalore Court of Small Causes.

8 There are however two other grounds on which they may be considered entitled to exemption from the Jurisdiction of the Local Military Courts of Request. Viz.

First. That the Station of Bangalore is not a Military Cantonment, and that they do not in any respect belong to the Military force located here and for whose special benefit and behoof the Military Courts of Request have been locally instituted.

Secondly. That they are not residing within the limits of the Lines or Quarters which have been specially assigned for the occupation of the Troops cantoned in Bangalore.

9 The former is a general

ground for exemption, whilst the
latter is a special one applicable
to those of the Military Officers
in Civil Employment residing on the
High ground and elsewhere, not
within the actual limits of the
Lines, which have been specially
assigned for the occupation of the
Troops, and might I doubt not
be satisfactorily pleaded by them
in bar of jurisdiction before the
Local Military Courts of Request.

10 The former ground of
exemption, if considered a valid
and correct one, and authoritatively
recognized as such, would render
Major Sankey undoubtedly amena-
ble to the Bangalore Court of
Small Causes, whilst it is
doubtful whether that Officers
could plead immunity from the
Jurisdiction of the Military

Courts of Oyer and Terminer the
better ground of exemption, and
believe that he resides like my
self within the local limits of
the Military Staff Lines.

11 I merely mention the
above by way of illustration, and
not from any desire of making
personal allusions, and should
not of course have referred spe-
cially to the name of the above
Officer, if the present reference
had not originated in the Suit
to which he was a party as ex-
plained by J. R. Ricketts in the
accompanying letter.

12 I have been unable to
ascertain from the Records of
my own Office that there have
been any special orders issued
in regard to the accountability of
Civilians or Military Officers

in Civil employ residing in the
Bangalore Cantonments to the
Local Military Council of Request,
and I have therefore deemed it
right to refer the general question
for solution to the Commission,
more especially as I am aware
that a long correspondence took
place between the late Commission,
General Brunsford who was at the
time Commanding the Division
and the Mysore Government,
in regard to the Station of Banga-
lore being declared not to be a
Military Cantonment, and also
in regard to the assignment of
certain defined limits for the
occupation of the Troops and
for the Quarters of the Military
Officers attached thereto, but
whether the said limits were

placed specially under Military
Laws and Regulations and under
the exclusive control of the
Military Authorities, I have
been unable accordingly to ascertain

I have the honor to be

Sir,

Your most Obedt. Servant

Bangalore
24th Sept 1863

Wm. Sandes
Lieut. Commissioner

1863

Ed.

Section

No.

7-63

1863

The Judicial Commissioners in charge

No 2338. 1863

Order of the Court

205

From the same 31st Inst. No. 205
Copy sent to the Govt. of India
with letter No. 109 dated 1863/64.

No 2338. 1863. 5-10-63.

1863/64.
Jude - 79

To The Judicial Commⁿ Mysore

Sir,

Section.....
No.....
Date.....

I have the honor,
by desire of the Commⁿ
to forward for perusal,
with reference to your
letter N^o-171 of the
24th Ult^o, the corres-
pondence marginally
noted / to be returned,
^{which} ~~as they~~ contains the
orders hitherto issued
regarding the jurisdiction
of the Courts at Bangalore
2. The Commⁿ.
understands however
that in constituting a
Court of Small Causes at
this Station, it was the
intention of the Gov^t of
India that all persons
not actually borne on the
Military Rolls should
be amenable to the said

x Originals.

N^o-12 d/ 18 January 1843.
From Commⁿ. to Off^r Sec.
to Gov^t of India.

" 808 d/ 18 May 1843. From
Sec: Gov^t of India. For: Dist.
To Commⁿ. with copy of
Letter d/ 22 April 1843
From Advocate General
to Off^r Sec: Gov^t of India.

" 154 d/ 16 Nov. 1849. From Officer
Commanding Mysore Divⁿ.
To Commissioner.

" 133 d/ 7 April 1851 From Commⁿ.
to Officer Commanding
Mysore Division.

B 3/10/63

newly constituted

Court, & that the accidental

16
circumstance of their
residing in a strictly
Military quarter would
not bar their liability.

According to this, Major
Sankey would be so
amenable.

3. Should you
however entertain any
doubts on this point, the
Comm. will be glad to
refer the question for
the orders of Government.

Yours &c.

W
Secretary.

Bangalore
Oct 1863

29

1863 No. 146

From
The Judicial Commissioner
To The Secretary

Section _____
File No. _____
Serial No. _____

Dated 31 October
Despatched _____
Received 2 November

Enclosures, No. 6
N^o 205

Subject

With a reference to his
letter Genl. 2338 of the 5th
Instant submitted for the in-
formation and orders of the
Commissioner, copy of corres-
pondence between this office
and the Judges of the small
Cause Court soliciting in-
struction and facility as to the
amenability of military officers
in civil employ to the civil
Courts of the Station.

Orders.
Cmt. 2/4/63

m. No. 3 of Pro. 7/4/63

Mysoor & Madras & Cochin Office,
From

C. B. Andrews Esquire,
Judge Commissioner

To
in Mysore
No. 763

The Secretary
to the Commissioner
of Mysore

Dated Bangalore 31st October 1863
Sir,

With acknowledgements to your
letter G.O. No. 2338
Jud. - 79 of the 5th Instant
under acknowledgment, I have the
honor to return the original correspond-
ences therewith forwarded for my
perusal as marginally noted, and to
submit for the information and Order
of the Commissioner, Copies of the
letter which I addressed to the First
Judge of the Small Cause Court,
on receipt of your letter above quoted,
and of that Officers reply -

To The Secy. Secretary Govt. of India dated 18th January 1863 No. 18
From Secretary with Governor General - " - 18th May 1863 No. 808
" - Office Commanding Mysore Division - " - 16th June 1863 No. 164
To - " - " - " - 14th April 1867 - " 133

From a perusal of the
latter Correspondence, the Commission
will observe, that when forwarding
to the Judges of the Small Cause
Court a copy of your letter under reply,
I took the opportunity of informing
them that I considered the express-
sion of the Commissioner's opinion
as to the unsuitability to the Juris-
diction of their Court of all persons
not actually borne on the Military
Rolls of the Major Division of
the Army would sufficiently justify
them in extending the jurisdiction
of the Court over all such parties.
Although I was doubtful how far
Military Officers in Civil employ
would be able successfully to claim
immunity from the Jurisdiction
of the Military Court of Requests
solely upon the strength of such
expression of opinion on the part
of

of the Commission.

3 Mr. Ricketts however, as you will perceive, considers that it will be desirable, for the reasons detailed by him, that the question of the liability of Officers not actually borne on the Military Rolls to the Jurisdiction of the - Small Cause Court and not to a Military Court of Requests in suits under 400 Pounds in value, should be definitively decided by referring the same for the Orders of Government.

4 As Mr. Ricketts has stated fully and clearly the grounds on which he considers it very doubtful how far he would with reference to the strict letter of the enactments relating to the constitution and jurisdiction of Military Courts of Requests be justified in extending the jurisdiction of his Court over Military Officers in Civil Employment.

I consider it will not be necessary
for me in submitting the present
correspondence for the Orders of the
Commissioners to enter any further
on the subject, more especially as
I have already explained in detail
my views in regard to the question
of Jurisdiction in my letter to your
address No. 171 of the 21st Ultimo.

5 I annex for facility of reference
copies of Sections 8 and 9 of the Statute,
relating to European Courts of Requests
referred to by Mr. Ricketts in the
2^d Part of his letter, and also an Ex-
tract from the Preamble to the
above enactment as given in the words
of Clause 54 of 3^d and 4th Vict. Cap. 37
referred to in Section 9 of the Statute.

I have the honor to be,

Sir,

Yours most Obedt. Servant

Bangalore
31st October 1843

(Chas. Sanders)

From

C. B. Saunders Esquire

Judicial Commissioner in Mysore.

To

The First Judge of the
Bangalore Small Cause Court.Dated Bangalore the 14th October 1863.

Sir,

In continuation of my No. 296 dated 28th September 1863 and in reply to your letter No. 306 of the 14th ultimo, I have the honor to forward for your information and guidance the accompanying Copy of a letter which I have received from the Secretary Communicating the Commissioner's views on the subject of the amenability of Military officers in Civil employ to the newly constituted Court of small causes in the Bangalore Cantonment.

2. Also forward for your perusal the original correspondence marginally referred to in

The offg. Secretary Govt. of India
d/18th January 1843 No. 13.
Secretary with Govt. General
d/18th May 1843 No. 808.
officer Command. Mysore Division
d/16th November 1849 No. 154.
D^o D^o D/7th April 1851
No. 133.

Captain Kay's letter and shall feel obliged by your returning the same at your earliest convenience under cover of your reply.

3. It appears to me that the expression of the Commissioners opinion as to the amenability

to the Jurisdiction of your Courts of all persons not actually borne in the Military Rolls of the Mysore Division of the Army, will sufficiently justify you in extending the Jurisdiction of the Court over all such parties; in accordance with this Ruling, it will not I apprehend be advisable for you to strike out for want of Jurisdiction such claims as that which formed the Subject of the reference and which was brought against Major Lankey. —

4. I am however of opinion that it is still doubtful whether Military officers in Civil Employ will be able successfully to claim immunity from the Jurisdiction of the Military Courts of Request merely upon the strength of the enclosed expression of the Commissioner's opinion on the subject, but as this question is not the one which has been directly under reference, I do not propose to require that it should be referred for the orders of Government unless you consider that it is desirable that any doubts which may be entertained on the subject should at once be set at rest, and that a distinct order in regard to the demarcation of the Jurisdiction of the 2 Courts in respect of parties not actually borne on the Military Rolls, should be passed under the Authority of the Supreme Government in order to prevent any chance of collision or confliction of Jurisdiction between the 2 Courts. —

Bangalore }
The 14th October 1863.

I have the honor to be Dear
/signed/ C. F. Saunders
Judicial Commissioner.

From

L. Ricketts Esquire

First Judge.

Bangalore Court of Small Causes.

To

C. B. Finders Esquire

Judicial Commissioner

in Mysore.

Dated Bangalore 24th October 1863.

Sir,

I. In continuation of my letter to your address
No. 306, dated 14th September 1863, and in reply to your letter
No. 188 dated 14th October 1863, forwarding for my informa-
tion and guidance copy of a letter from the Secretary
to the Commissioner communicating the Commis-
sioner's views on the subject of the amenability of Military
Officers in Civil Employ to the jurisdiction of this Court,
I have the honor to state the following, as well as to return
as per margin, the original correspondence which accom-
panied your letter.

II. I submit, as put by the Secretary to the
Commissioner, that the accidental circumstance
of residence or non residence in a strictly military
quarter of the Cantonment does not bear on the
question of the amenability or otherwise of Military
Officers in Civil Employ to the Jurisdiction of this
Court,

To Off^{ce} Secretary to Government of India dated 18th January 1843 No. 13.
From Secretary with Governor General - dated 15th May 1843 No. 818.
From Officer Commanding Mysore Division - 16th November 1849 No. 154.
To " 7th April 1861 - No. 193.
D^d

Count, for in sections 8 and 9 of the Statute relating to European Courts of Requests it is laid down that persons amenable to Courts of Requests and residing at the station do not avoid their amenability by residing out of Military limits, whilst persons not amenable to the Articles of War, do not become subject to the jurisdiction of such Military Courts by the fact of residing within a Military Cantonment, but I would beg further to submit that that portion of the Secretary's letter which states that the Commissioner understands it was the intention of the Government of India that all persons not actually borne on the Military Rolls should be amenable to this Court, is not quite so clear in my humble judgment. The reason for my doubts, as already stated in Para III of my letter to your address No. 306 dated 14th September 1863, is the wording of the Statute which declares that actions of debt &c. against officers amenable to its provisions shall be Cognizable before a Military Court of Requests, and not elsewhere. and these doubts have been further strengthened by a perusal of the then Advocate General, Mr. Lyall's letter, dated 22nd April 1843 (and which forms part of the original correspondence forwarded by you to me) to the Officiating Secretary to the Government of India, Foreign Department, giving his opinion on a subject of jurisdiction of the Courts of Mysore in a case where an European officer was cos

Defendant.

"Claim against an officer or soldier does not exceed
"400 Sicca Rupees the action can only be tried in a
"Military Court of Requests and if brought elsewhere
the objection to the Jurisdiction will be fatal.

III. On these grounds I would beg to suggest,
with reference to me 4th Para of your letter now under
reply, that it would be desirable to settle definitely the
question; as to the Amenability, or otherwise, in suits
under 400 Rupees of officers not actually borne on the
Military Rolls to the jurisdiction of this Court, and
not to a Military Court of Requests; by referring the
same for the orders of Government.

IV Looking at the Summary jurisdiction
of this Court, and the extensive powers it possesses
for enforcing obedience to its process &c. I think
that it might on some occasion hereafter be produc-
tive of inconvenience if any thing approaching
to a Confliction of jurisdiction between the 2 Courts
should be the means of encouraging parties to dispute
whether successfully or not the jurisdiction of either
Court.

I have the honor to be Dear
signed L. Ricketts
First Judge.

True copies

Chas M. Stanley

Ed

27
Section 2863

"And be it enacted, that in all places where the said Company's Forces now are, or may be employed, or where any body of Her Majesty's Forces may be serving with the Forces of the said Company, situate beyond the jurisdiction of the Court of Requests established at the Cities of Calcutta, Madras, and Bombay, respectively, actions of debt and all personal actions against Officers, all persons licensed to act as Butlers to any Corps or Detachment, or at any Station or Cantonment, all persons resident within the limits of a Military Cantonment, or other persons amenable to the provisions of this Act, shall be cognizable before a Court of Requests composed of Military Officers and not elsewhere, provided the value in question shall not exceed four hundred Company's Rupees, and that the Defendant was a person of the above description when the Cause of action arose, which Court the Commanding Officer of

of any Station or Cantonment is hereby authorized and empowered to convene.

8 Persons amenable to Courts of Requests who may reside at the Station, but without the limits of the Military Cantonment, are subject to the jurisdiction of such Courts held within such Cantonment.

9. Persons not amenable to the Articles of War, although residing within a Military Cantonment, are not subject to the jurisdiction of Courts of Requests under the provisions of Section 54 of the Act 3rd and 4th Victoria, Cap. 37. But European or East Indian traders and Non-Military persons employed in offices or the Department of Public Works, residing within Cantonments, who do not fully acknowledge the jurisdiction of a Court of Requests in all cases of petty debt within the amount fixed by the above cited Section, may be directed by the Commanding Officer of the Station to quit the limits of Cantonments forthwith, (a report of the circumstance being promptly made for the information of Government.)

True Extracts

Chas W Samuels
Jud. Commissioner

From

L. Rickells Esq^{re}

1st Judge of the Bangalore
Court of small causes.

To

C. B. Saunders Esquire.

Judicial Commissioner
in Mysore.

Dated Bangalore 14th September 1863.

Sir,

In a recent case in this Court, ~~Brevet~~
Major Sankey of the Corps of Engineers and
~~Assistant to the~~ Chief Engineer of ~~Mysore~~ appeared
as Defendant in a small suit which he wished
to contest on its merits - Major Sankey did
not urge the plea of no jurisdiction, but merely
mentioned that not long before, in some almost
similar suit, he had been summoned and had
to appear as Defendant before a Military Court of
Requests -

II As the XXIV section of the
Regulations of this Court expressly saves the
jurisdiction of Military Courts of Requests, and
as Major Sankey had been made amenable to
the Military Court, I struck out the case for want
of jurisdiction -

II.

I apprehend on the same ground of want of jurisdiction, this Court is also precluded from entertaining suits against Military Officers in Civil employ - as for instance the officers serving in the Mysore Commission. The Statute relating to European Courts of Requests declares that actions of debt and all personal actions against officers amenable to its provisions, shall be cognizable before a Court of Requests composed of Military officers, and not elsewhere - Nothing is said about officers in Civil employ, but looking generally at the term "Officer" and the 45th clause of the Statute which makes provision for the stoppage of a debtors pay when his pay is ~~drawn~~ ^{drawn} for him ~~by~~ ^{by} ~~the~~ ^{the} ~~Officer~~ ^{Officer} ~~of the~~ ^{of the} ~~Depart-~~ ^{Depart-} ~~ment,~~ ^{ment,} I conclude that officers in Civil employ such as serving in the Mysore Commission are amenable, in suits not exceeding 400 Rupees, to a Military Court of Requests, and not to the jurisdiction of this Court. The more particularly so as a Military Court of Requests did entertain a suit against Major Sankey being at the time an Officer in Civil employ.

IV.

In the event of your agreeing with me that my interpretation as above is correct, I would beg to suggest whether it would not be advisable to advocate, that officers in Civil employ should be declared amenable to this Court and not to a Military Court of Requests. I make this suggestion from

no wish to extend the courts jurisdiction, but - be-
cause I think for various reasons, it would be more
acceptable and more convenient to declare an officer
in Civil employ amenable to the Civil Court of the
place and not to the Military Court.-

I have the honor to be Sir

(signed) L. Pickett

1st Judge.-

True copy

Chas. S. Sams

Judicial Commissioner.

27/3

Copy sent to Govt. of India For Defacto
with letter no. 109 d/7th Nov/83.

Encls: on J. L. Lawrence's letter
24th Sept/83 No. 191.